

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES EDWARD SCOTT, III,

Plaintiff,

v.

JESSICA RAMBUR,

Defendants.

Case No. 3:23-cv-00267-ART-CSD

SCREENING ORDER

Plaintiff James Scott, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil-rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1, 3). The Court now screens Scott’s civil-rights complaint under 28 U.S.C. § 1915A. Having done so, the Court finds that Scott fails to state a colorable claim under the First and Fourteenth Amendments about denial of access to the courts, so that claim is dismissed with leave to amend. The Court denies Scott’s first application to proceed *in forma pauperis* because it is incomplete. (ECF No. 1). And although Scott’s second application to proceed *in forma pauperis* is complete, the Court defers ruling on it. (ECF No. 3).

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a

1 claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
2 (1) the violation of a right secured by the Constitution or laws of the United States;
3 and (2) that the alleged violation was committed by a person acting under color
4 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

5 In addition to the screening requirements under § 1915A, under the Prison
6 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated
7 person’s claim if “the allegation of poverty is untrue” or if the action “is frivolous
8 or malicious[,]” “fails to state a claim on which relief may be granted[,]” or “seeks
9 monetary relief against a defendant who is immune from such relief.” 28 U.S.C.
10 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief
11 can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the
12 Court applies the same standard under § 1915 when reviewing the adequacy of
13 a complaint or an amended complaint. When a court dismisses a complaint under
14 § 1915(e), the plaintiff should be given leave to amend the complaint with
15 directions as to curing its deficiencies, unless it is clear from the face of the
16 complaint that the deficiencies could not be cured by amendment. *See Cato v.*
17 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995), *superseded on other grounds*
18 *by* 28 U.S.C. § 1915(e).

19 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
20 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
21 failure to state a claim is proper only if the plaintiff clearly cannot prove any set
22 of facts in support of the claim that would entitle him or her to relief. *See Morley*
23 *v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the
24 Court takes as true all allegations of material fact stated in the complaint, and
25 the Court construes them in the light most favorable to the plaintiff. *See Warshaw*
26 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a pro se
27 complainant are held to less stringent standards than formal pleadings drafted
28 by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under

1 Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
 2 more than mere labels and conclusions. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
 3 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
 4 insufficient. *See id.*

5 Additionally, a reviewing court should “begin by identifying pleadings
 6 [allegations] that, because they are no more than conclusions, are not entitled to
 7 the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal
 8 conclusions can provide the framework of a complaint, they must be supported
 9 by factual allegations.” *Id.* “When there are well-pleaded factual allegations, a
 10 court should assume their veracity and then determine whether they plausibly
 11 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states
 12 a plausible claim for relief . . . [is] a context-specific task that requires the
 13 reviewing court to draw on its judicial experience and common sense.” *Id.*

14 Finally, all or part of a complaint filed by an incarcerated person may be
 15 dismissed sua sponte if that person’s claims lack an arguable basis either in law
 16 or in fact. This includes claims based on legal conclusions that are untenable,
 17 like claims against defendants who are immune from suit or claims of
 18 infringement of a legal interest which clearly does not exist, as well as claims
 19 based on fanciful factual allegations, like fantastic or delusional scenarios. *See*
 20 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989), *superseded on other grounds*
 21 *by* 28 U.S.C. § 1915(e).; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.
 22 1991).

23 **II. SCREENING OF COMPLAINT**

24 **A. Scott’s factual allegations**

25 The events of the Complaint happened while Scott was incarcerated at
 26 Northern Nevada Correctional Center (“NNCC”). (ECF No. 1-1 at 1). From 2019
 27 through January 2023, the Defendants purposefully provided “partial, slighted,
 28 and biased ‘official responses’” to Scott’s grievances for the purpose of depriving

1 him an administrative remedy. (*Id.* at 5). Defendants also purposefully and
 2 wrongfully removed documents from Scott’s grievances that he needed to
 3 complete the process. (*Id.* at 6). Defendants purposefully and wrongfully issued
 4 “Improper Grievance Memos” to hinder Scott’s ability to exhaust the
 5 administrative grievance process. (*Id.*) And Defendants purposefully and
 6 wrongfully sided with their friends within the prison and NDOC instead of Scott
 7 about matters raised in his grievances. (*Id.* at 7).

8 **B. Analysis of Scott’s claims**

9 Based on the allegations summarized above, Scott sues Jessica Rambur,
 10 John W. Henley, Robert Hartman, Lt. Sawin, M. Sullivan, Lt. Miller, Perry Russell,
 11 Lt. Clark, and Mike Minev. (*Id.* at 1–3). He seeks monetary, injunctive, and
 12 declaratory relief. (*Id.* at 8). The Court liberally construes the Complaint as
 13 bringing a claim under the First and Fourteenth Amendments about denial of
 14 access to the courts. The Court addresses this theory and any issues below.

15 **1. First and Fourteenth Amendments—access to the courts**

16 Prisoners have a constitutional right of access to the courts. *Lewis v.*
 17 *Casey*, 518 U.S. 343, 346 (1996). This right “extends to established prison
 18 grievance procedures.” *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995),
 19 *overruled on other grounds by Shaw v. Murphy*, 532 U.S. 223, 230 n.2 (2001). “To
 20 state a claim for violation of the right of access to the courts, an inmate must
 21 show that he or she has suffered an “actual injury.” *Lewis*, 518 U.S. at 349. To
 22 do so, the inmate must “demonstrate that a nonfrivolous legal claim had been
 23 frustrated or was being impeded.” *Id.* at 353. Legal claim in this context is limited
 24 to nonfrivolous direct criminal appeals, habeas corpus proceedings, and § 1983
 25 actions. *Id.* at 353 n.3, 354–55. To properly plead an actual injury, the inmate
 26 must identify the underlying cause of action and describe the official acts
 27 frustrating or impeding that litigation. *Christopher v. Harbury*, 536 U.S. 403, 415
 28 (2002).

1 Scott fails to state a colorable claim about denial of the right of access to
2 the courts. There are no factual allegations that any Defendant's action frustrated
3 or impeded a nonfrivolous legal claim Scott had in contemplated or existing
4 litigation. At best, the allegations state that Defendants' actions prevented or
5 slowed Scott's ability to proceed through the NDOC's administrative grievance
6 procedures. But frustrated or slowed administrative procedures alone are not an
7 actual injury. Rather, Scott must plead facts to show that Defendants' actions
8 caused a nonfrivolous direct criminal appeal, habeas corpus proceeding, or
9 § 1983 action to be frustrated or impeded.

10 Scott has filed dozens of civil-rights actions contending that his
11 constitutional rights were violated while he was incarcerated at NNCC from 2019
12 to 2023. (See ECF No. 4). Although it appears unlikely that Scott can plead facts
13 to show that he suffered an actual injury, out of an abundance of caution, the
14 First and Fourteenth Amendment claim about denial of access to the courts is
15 dismissed without prejudice and with leave to amend.

16 **III. LEAVE TO AMEND**

17 Because it appears that Scott could cure the deficiencies of his denial-of-
18 access-to-the-courts claim, the Court grants him leave to file a first amended
19 complaint to attempt to replead that claim. If Scott chooses to file an amended
20 complaint, he is advised that an amended complaint replaces the original
21 complaint, so the amended complaint must be complete in itself. See *Hal Roach*
22 *Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding
23 that "[t]he fact that a party was named in the original complaint is irrelevant; an
24 amended pleading supersedes the original"). This means Scott's amended
25 complaint must contain all claims, defendants, and factual allegations that he
26 wishes to pursue in this lawsuit.

27 Scott should file the amended complaint on this Court's approved prisoner-
28 civil-rights form, and it must be titled "First Amended Complaint." Scott must

1 follow the instructions on the form. He need not and should not allege very many
2 facts in the “nature of the case” section of the form. Rather, in each claim, he
3 should allege enough facts to show what each defendant did to violate his civil
4 rights.

5 **IV. CONCLUSION**

6 It is therefore ordered that Scott’s first application to proceed *in forma*
7 *pauperis* (ECF No. 1) is denied without prejudice as incomplete.

8 It is further ordered that a decision on Scott’s second application to proceed
9 *in forma pauperis* (ECF No. 3) is deferred.

10 It is further ordered that the First and Fourteenth Amendment claim about
11 denial of access to the courts is dismissed without prejudice and with leave to
12 amend.

13 It is further ordered that all Defendants are dismissed without prejudice
14 from this action.

15 It is further ordered that Scott has until April 25, 2024, to file a first
16 amended complaint.

17 It is further ordered that if Scott chooses to file an amended complaint, he
18 should use the approved form and he will title it “First Amended Complaint.”
19 Scott is advised that the Court will screen the amended complaint in a separate
20 screening order and the screening process will take several months. If Scott
21 chooses not to file an amended complaint, this action will be subject to dismissal
22 without prejudice for failure to state a claim.

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1 It is further ordered that the Clerk of the Court must file the Complaint
2 (ECF No. 1-1) and send Plaintiff James Scott the approved form for filing a 42
3 U.S.C. § 1983 complaint, instructions for the same, and a copy of his Complaint
4 (ECF No. 1-1).

5 Dated this 26th day of 2024.

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8 ANNE R. TRAUM
9 UNITED STATES DISTRICT JUDGE
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